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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 93

5 CETIN AKSU,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 5, 2014
12:01 p.m.

10
11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14
15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
Southern District of New York
18 BENJAMIN NAFTALIS
ALEX ROSS MILLER
Assistant United States Attorney

19 LAW OFFICES OF LAWRENCE D. GERZOG
20 BY: Lawrence D. Gerzog
21 Attorneys for Defendant

22 Present: Special Agent Paul Larson, DEA

23 Turkish Language Interpreter

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(In open court; defendant present)

THE DEPUTY CLERK: This is September 15, 2014.

Please bring the defendant to counsel table.

This is United States v. Cetin Aksu, docket number 11
CR 93, defendant number 3.

Will everyone please be seated. And will the parties
please identify themselves for the record.

MR. NAFTALIS: Good morning, your Honor. Ben Naftalis
for the government, joined by Assistant United Attorney Alex
Ross Miller who joined the office this week. And Special Agent
Paul Larson, with the DEA.

THE COURT: You joined the office this week?

MR. MILLER: Yes, sir.

THE COURT: So what do you need these two guys for?

MR. MILLER: Helping me along, your Honor.

THE COURT: Welcome aboard.

MR. MILLER: Thank you.

MR. GERZOG: Judge, I'm Lawrence Gerzog. I represent
Cetin Aksu, seated to my right.

THE COURT: The gentleman to his right?

THE INTERPRETER: Good morning, your Honor, Turkish
interpreter.

MR. GERZOG: And may I introduce the Court to the Vice
Consul of Turkey, here in New York.

THE COURT: Good morning. I should say good

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1 afternoon. And I apologize for the delay. I had other matters
2 which came up.

3 So, I'm very anxious to hear from counsel, although I
4 have received submissions. Because I think this is a difficult
5 sentence.

6 To get some of the preliminaries out of the way, I
7 take it both sides are agreeing that the offense level is 43,
8 the criminal history category is 1, and the guideline range,
9 which is not binding on the Court but which the Court must
10 consider, is life imprisonment. Although, not all the counts
11 carry up to life. Count one carries 10 years to life;
12 count two, though, only carries up to 15 years; count three
13 carries 25 years to life; and count four covers only up to five
14 years.

15 Everyone in agreement with the guideline calculation?

16 MR. GERZOG: Your Honor, I believe you said it is
17 criminal history category I. I believe, by operation of the
18 guidelines because of the second count, it is criminal history
19 category VI, actually. But it doesn't impact the guideline.

20 THE COURT: Yes, I think that's right.

21 MR. NAFTALIS: Yes, your Honor.

22 THE COURT: So it's a serious error, then, in the
23 presentence report, which we'll need to get corrected. But I
24 agree it is VI.

25 All right. But the government has indicated its

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1 intention to move for a downward departure and nonguidelines
2 sentence for substantial assistance.

3 Does the government so move?

4 MR. NAFTALIS: It does, your Honor.

5 THE COURT: And that motion is granted.

6 So here's the real issue.

7 Oh, I should mention the probation office recommends
8 and a three-year sentence.

9 The crimes that the defendant committed were obviously
10 very serious crimes. Absent cooperation, this Court would have
11 certainly considered a sentence of many decades, if not life.
12 And I think there was a 25 year mandatory minimum.

13 On the other hand, his cooperation was certainly very
14 substantial. And under arduous circumstances. So he certainly
15 deserves a sentence that gives him substantial credit for that
16 very substantial cooperation. So it's not going to be 25
17 years. It will be less than that. It will certainly be much
18 less than life. It is certainly not going to be zero. Defense
19 counsel recognizes that and asks for a three-year sentence.

20 But where, in between 0 and 25 this sentence should be
21 is, I think, a difficult issue. So let me hear first from
22 defense counsel, then from government counsel, and then from
23 the defendant, if he wishes to be heard.

24 My law clerk corrects me. I said the defendant
25 recommended three years. As I say, defense counsel, but

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1 probation recommended eight years.

2 Yes.

3 MR. GERZOG: Your Honor, as you said, this is a very
4 unusual case. And I certainly agree with the Court that the
5 crimes that Mr. Aksu stands convicted of are among the most
6 serious that a federal court has to deal with.

7 However, the reason I ask the Court for a three-year
8 sentence is, in addition to the fact that he cooperated, he
9 cooperated against dangerous people, he cooperated against
10 people who would have a motive to harm him when he gets back to
11 Turkey, is that his involvement in the crime did not come from
12 a desire to aid a terrorist organization. He certainly --

13 THE COURT: Yeah, he was more of a mercenary, to put
14 it, perhaps --

15 MR. GERZOG: And even then, Judge, you know his --
16 what happened, as your Honor knows I'm sure from reading all of
17 the papers, Mr. Aksu had a trucking company in Turkey. And it
18 was successful for a while. And but then it went bankrupt.
19 And he attempted to defraud the bankruptcy process in Turkey by
20 selling assets of his trucking company to an underworld figure,
21 this Mr. Norgese. He expected Mr. Norgese to pay him \$300,000.
22 As you see from the papers, he owes that much and more to banks
23 in Turkey. And what he was essentially trying to do, was get
24 out of debt in Turkey.

25 Mr. Norgese did not pay him the agreed-upon amount.

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1 And then Mr. Norgese suggested to Mr. Aksu that he become
2 involved in these matters, and that that might allow
3 Mr. Norgese to pay him the 300,000 he owed him and perhaps some
4 more. But Mr. Aksu's motivation was not to get rich, not to
5 set his family up for life. He was merely trying to pay back
6 the debts he owed.

7 Now, of course the way he chose to do that, even in
8 defrauding the bankruptcy process, was inappropriate. And when
9 he got involved in this, he made that mistake much, much more
10 serious, which he understands, and which I understand. But
11 when your Honor uses a word like mercenary, although that is
12 correct, I think of mercenary as someone who, you know, goes to
13 the highest bidder and is out to make a --

14 THE COURT: Yeah, I agree. It doesn't quite -- it is
15 not the perfect adjective.

16 MR. GERZOG: And so, you know, although Mr. Aksu has
17 done something very wrong and is very remorseful about it, his
18 motivation was not to become part of the drug trade, not to
19 become part of the weapons trade. He, himself, had no contacts
20 in either area. He, himself, had no opportunity to obtain
21 drugs or weapons from anyone.

22 You know, as I said in my submission, you know,
23 because he wanted this money from Mr. Norgese, he found himself
24 as a fairly central character in this pot boiler of a
25 conspiracy. And I can only imagine that, at times, he sort of

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1 looked around and thought, what have I gotten myself into, you
2 know, what's going on here. Given his background, he is just
3 not kind of person who you would expect to be going from city
4 to city and talking about \$9 million worth of arms or
5 \$2,000,000 worth and so forth and so on.

6 And if you look at the sentence that the Court gave
7 his co-defendant, Mr. Webbe, who I assume -- I have not
8 obviously seen Mr. Webbe's presentence report. But since he
9 was convicted of the terror conspiracy, I assume his guidelines
10 were also quite high. Your Honor gave him a five-year
11 sentence. And Mr. Webbe is a Lebanese national who actually
12 has ties to Hezbollah. And the intent was to get these arms
13 that were fictitious -- since this was a sting. But his intent
14 was to get those weapons to Hezbollah. And Mr. Aksu knew that
15 that was Mr. Webbe's intent. And he didn't go home and say,
16 oh, no, I can't be involved in anything that has to do with
17 Hezbollah. He didn't do that. I understand that. But he was
18 not trying to help Hezbollah. He was simply trying to get the
19 money that Mr. Norgese owed him, so that he could perhaps
20 settle up his life in Turkey and get back on some kind of even
21 keel. And so when you look at Mr. Webbe's five-year sentence,
22 most respectfully, that's why I thought it was appropriate to
23 ask for a three-year sentence. Because Mr. Webbe did intend
24 that Hezbollah be the beneficiary. Mr. Webbe is Lebanese and,
25 therefore, understands fully what Hezbollah is, and who's

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1 Hezbollah, where Hezbollah's politics and tactics lie.

2 As I mentioned in my letter and as I have learned
3 during the course of this case, the news media in Turkey does
4 not report on Hezbollah the way it reports on Hezbollah here in
5 the United States. Turkey is predominantly a Muslim country.
6 And while I wouldn't say they are supportive of Hezbollah, they
7 certainly don't report on Hezbollah's activities in such a way
8 that an average Turkish citizen would be expected to know that
9 Hezbollah is this very violent world-wide terror organization.

10 And I'm not saying that Mr. Aksu had no idea. He did
11 know. He was aware of who they were. But he doesn't have, by
12 virtue of his ethnicity, by virtue of his education, by virtue
13 of his background, the kind of familiarity with Hezbollah that
14 obviously Mr. Webbe, who was Lebanese and who was seeking to
15 help Hezbollah.

16 And your Honor saw fit to give him a five-year
17 sentence. And so that's what caused me to suggest a three-year
18 sentence. And, other than that, all I can say is that as soon
19 as I came onto the case and explained things to Mr. Aksu, he
20 began to cooperate. I didn't have to beat him up, as we say in
21 the trade. You know, he was perfectly willing to do that.

22 THE COURT: The record should reflect that counsel is
23 using that term metaphorically.

24 MR. GERZOG: That's right, in air quotes. And he was
25 eager to help. And I think Mr. Naftalis' letter reflects the

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1 fact that the government benefited from his help. And your
2 Honor heard his testimony at the trial of Mr. Henareh, so your
3 Honor is also aware of how important his cooperation was.

4 And I know Mr. Aksu does want to speak to the Court.

5 THE COURT: And I want to hear from him. But I want
6 to hear from the government first. We'll come back to you.
7 Thank you very much.

8 MR. NAFTALIS: Thank you, your Honor.

9 You know, of course, I'm not going to recommend a
10 sentence, your Honor. But I do want to, you know, echo what
11 Mr. Gerzog was talking about in terms of just --

12 THE COURT: Because the government never recommends a
13 sentence, except when it recommends a sentence.

14 MR. NAFTALIS: Exactly. It's only honored in the
15 breach, but paragraph 9 and 10, it does speak to the other
16 defendant's sentences. Mr. Henareh, who went to trial, and
17 your Honor presided over that trial, was sentenced to
18 210 months. And I frame that because he was -- he pled. He
19 was convicted of the drug offense. Mr. Webbe was convicted of
20 essentially the same offenses as Mr. Aksu, and was given five
21 years. But Mr. Aksu and Mr. Henareh, while they are situated
22 differently factually in the conspiracy and the sting, Mr. Aksu
23 played a very different role, not only in the conspiracy but
24 also to the government. Mr. Webbe did not testify. He was
25 more aligned with, and directly connected with, the Hezbollah

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1 end of this narcoterrorism conspiracy. He was from Lebanon.
2 He directed to Hezbollah. Mr. Aksu, on the other hand, is
3 Turkish. He was a truck driver and, really, was providing the
4 middleman support. But his role on the government was crucial.
5 And your Honor will remember this from the trial and also the
6 sentencing of Mr. Henareh, the key defense that the government
7 anticipated and then played out was that this was a whole
8 fiction. That the DEA entrapped, not legally, but factually,
9 Mr. Henareh. The drugs were fake. And that was evidence of
10 the fact that this was all make believe. The purity of the
11 drugs, the one sample was very low. So no one really was into
12 this, and but for the DEA's involvement and going overseas,
13 everyone would have lived a happy, law-abiding life.

14 THE COURT: So I think, though, I need to press you a
15 little bit --

16 MR. NAFTALIS: Sure.

17 THE COURT: -- on in terms of culpability -- and then
18 we'll turn to the assistance in a minute. In terms of
19 culpability, who would you, in the balancing all of the
20 relevant areas, do you view as more culpable in this overall
21 conspiracy, Mr. Webbe or Mr. Aksu.

22 MR. NAFTALIS: I think they are different.

23 THE COURT: They are different.

24 MR. NAFTALIS: But I think Mr. Webbe was more
25 culpable, for this reason. There was an ideological -- Mr.

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1 Webbe was not aligned with Hezbollah, but knowingly, and
2 carelessly, and childishly, was a proponent of procuring the
3 arms for Hezbollah.

4 Mr. Aksu, he was tasked with helping negotiate this
5 deal by Mr. Norgese in Turkey. And I do have to disagree with
6 Mr. Gerzog about, you know, I think while Hezbollah can kind
7 of, especially in these times if you read the paper, can be
8 looked upon as a little bit more of a political group than a
9 terrorist group, I think all reasonable people would put them
10 kind of more to the right of the terrorist scale. But Mr. Aksu
11 was not doing this for, really, for money, or for thrill as Mr.
12 Webbe was. But was trying to get himself out of that kind of
13 bad business deal with Mr. Norgese. He knew what he was doing.
14 Mr. Norgese was kind of the mastermind of the drugs and the
15 transaction with Hezbollah. That's not to excuse it, but he
16 was kind of more of the drug mule, when you think of it, right.
17 He knew what he was doing. He was tasked by the drug
18 trafficker, here Mr. Norgese to kind of act on his behalf. But
19 Mr. Webbe was kind of a different ilk. He was meeting with
20 folks in Lebanon. He was from Lebanon. Very aware of what
21 Hezbollah was. So --

22 THE COURT: All right. Let me ask you, then, the
23 other question.

24 MR. NAFTALIS: Yeah.

25 THE COURT: Which is because I didn't see Mr. Webbe,

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1 as you know.

2 MR. NAFTALIS: Sure.

3 THE COURT: I didn't see his testimony.

4 Who gave, if you can, more substantial cooperation,
5 Mr. Webbe or Mr. Aksu.

6 MR. NAFTALIS: Well, Mr. Aksu testified which, you
7 know, I'll come to that in a second.

8 Mr. Webbe gave the DEA great help, through his father,
9 as you recall. He gave that third-party cooperation which led
10 to some great seizures. He kind of began the snowball effect
11 which I think helped procure the assistance of Mr. Aksu. But
12 Mr. Webbe never testified. His cooperation was kind of fixed
13 from the moment he pled.

14 Mr. Aksu, while he initially fought pleading, did
15 plead. And we wanted his cooperation because when Mr. Henareh
16 decided to go to trial, Mr. Webbe was an imperfect cooperator.
17 Mr. Webbe was not charged with the drugs, was not really at any
18 of the meetings that were central to the narcotics conspiracy,
19 both the 1 kilogram delivery with Mr. Henareh or the
20 189 kilograms that come with the culmination of the case when
21 everyone was arrested. That was not part of Mr. Webbe. Mr.
22 Webbe was in the Maldives when all of that was happening.

23 So Mr. Aksu -- and this is what I was beginning to say
24 before. The government realized, and I think what the jury
25 took from Mr. Aksu, was he was able to put the color on the

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1 realness of this conspiracy, both in terms of the drugs and,
2 had your Honor let it in, the connection between the drugs and
3 Hezbollah.

4 Your Honor, we think we called Hezbollah an
5 international drug trafficking organization and left it at
6 that. But had that come in, Mr. Aksu would have spoken to the
7 fact that this was for Hezbollah, the money was for Hezbollah
8 to buy weapons. That he was tasked with doing this by Mr.
9 Norgese, knowing that Hezbollah was involved. We never got
10 into that. But without Mr. Aksu, we wouldn't have been able to
11 connect Mr. Norgese and the drug trafficking to the weapons
12 side of it.

13 What came out at trial, of course, was just the drug
14 aspect of it. And while a lot of this was recorded, and we had
15 several confidential sources and many agents testify, we only
16 had one witness that was able to say, I was in the room in
17 Turkey when the drug suppliers were making decisions. I was
18 dispatched from Turkey to have these meetings. The drugs were
19 intended to go to the United States. The drugs were supposed
20 to be real. And that was the theme of Mr. Henareh's counsel's
21 defense, was none of this was supposed to happen in New York,
22 it was all supposed to happen in Europe. It was all fake. The
23 drugs were impure. My client was a doctor. He was a sheep
24 herder who was ripped off unwittingly. And Mr. Aksu was able
25 to stand up and say I was actually in meetings in Cypress, in

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1 Malaysia, and Turkey, and we never were talking about medicinal
2 remedies, we were talking about heroin and how to move it to
3 the purchasers and, ultimately, to the United States.

4 THE COURT: All right. Thank you very much. That is
5 very --

6 MR. NAFTALIS: That's really --

7 THE COURT: -- very helpful, yes.

8 Before we go back to the defense, I'm delighted to
9 have the gentleman from the Turkish consulate here. I didn't
10 know whether he wanted to say anything or not.

11 MR. GERZOG: I'll let him speak for himself. I think
12 he is here primarily as an observer.

13 And let me just say, if either the Court or
14 Mr. Naftalis heard me to say that Hezbollah is an educational
15 organization or something like that, they are not --

16 THE COURT: No, your point is your client may not have
17 been as fully aware of the scope of its activities as someone
18 in a place like Lebanon. I don't think I need to make any
19 determination on where one way or the other about that.

20 MR. GERZOG: Very well. Thank you.

21 TURKISH VICE CONSUL: Thank you, your Honor. I have
22 no words to say.

23 THE COURT: Okay, great.

24 So let me hear from the defendant if he wishes to be
25 heard.

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1 MR. GERZOG: He does.

2 THE DEFENDANT: I want to apologize with all my heart
3 to the United States, to this Court, to the prosecutors, and
4 especially to my family.

5 I have done something very wrong. And I'm ashamed of
6 it. I'm ashamed of my actions. And ashamed that I have caused
7 so many people so much hardship.

8 I became involved with these crimes because my family
9 and I were in desperate financial difficulty. I had no
10 intention or plan to become wealthy, but merely to pay off my
11 business debts.

12 I realize now, of course, that my family's financial
13 difficulty did not legally or morally entitle me to do what I
14 did.

15 I realize now that if the conspiracy I thought I was
16 part of had, in fact, been real, I would have caused great harm
17 to many, many innocent people. Frankly, I'm glad the
18 conspiracy turned out to be the way it did, so that this great
19 harm was avoided.

20 I can promise you, your Honor, that I have learned a
21 very serious lesson from my involvement in this matter, and
22 that I will never, anywhere in the world, become involved in
23 criminal activity again.

24 THE COURT: Thank you very much.

25 Well, I think there is both a macro and a micro aspect

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1 of this sentence.

2 The macro side, is that in cases of this kind, the
3 United States is totally dependent on people cooperating. And
4 that is not an easy thing for folks to do. The very extreme
5 nature of the crimes and the criminal persons who organize
6 those crimes, such as Hezbollah, makes it a very difficult
7 decision to cooperate. And by this other side of that same
8 coin, means that very substantial credit has to be given for
9 cooperation in order to induce cooperation from people who
10 otherwise would be reluctant to do so.

11 The American system that is so dependent in cases of
12 this kind, and others, on cooperation, has often been
13 criticized in foreign lands, and otherwise, by people who don't
14 understand that the reason the United States has to offer
15 cooperation is because we don't undertake the more extreme
16 measures, arrests without probable cause, unlimited
17 wiretapping, physical threats by the government, and all of the
18 other things that some other countries sometimes undertake to
19 get the testimony that they need to prosecute these kinds of
20 cases. And so, as a country ruled by law, the best we can
21 offer is cooperation. And it would be a hollow offer if that
22 cooperation was not accompanied by very substantial benefits to
23 the cooperators. So that's the macro side.

24 The micro side and, of course I have considered all of
25 the factors under Section 3553(a) in determining the sentence.

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1 But one of those factors is the comparison between the two
2 cooperators here, Mr. Webbe and Mr. Aksu. And that's why it
3 was very important to me to hear from the government, a few
4 minutes ago, as to how the government basically evaluates that.
5 Because, while the Court gets to see part of the picture
6 through the trial and through the presentence reports, the
7 government has a more informed view from the entire
8 investigation. And what the prosecutor has just said, is that
9 while Mr. Webbe was very important, particularly at the outset
10 in getting the, if you will, cooperation ball rolling, Mr.
11 Aksu's cooperation was, in the end, more critical. And that
12 while neither Mr. Webbe nor Mr. Aksu can be viewed as having
13 committed other than the most serious crimes, Mr. Webbe's
14 culpability was, in some respects, greater.

15 So I think that that warrants a sentence below five
16 years, which is what I gave Mr. Webbe.

17 How long has Mr. Aksu served?

18 MR. GERZOG: Your Honor, he has been in prison in the
19 United States for two years and 9 months. He was in prison in
20 Romania, which I understand that wouldn't count for four
21 months. So, in total, he has been in prison for a little over
22 three years. But as far as his United States time already
23 served, he has served approximately two years 9 months.

24 MR. NAFTALIS: He was arrested in Romania in July of
25 2011. So in counting his preextradition time, since July of

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1 2011.

2 THE COURT: Well, the reason I ask this is the
3 sentence I was thinking about before hearing from counsel was
4 somewhere between four and five years. And I'm convinced, now,
5 it should be less than five years. But the portion that he
6 served in Romania will not be relevant. It's relevant for him,
7 obviously, and it's relevant in the broader picture. But it's
8 not relevant from the standpoint of the sentence I will now
9 impose. It won't be given as credit. But the portion he has
10 served in the United States will be. So I think, though,
11 taking account of the Romanian portion, I think I will adopt
12 the defense counsel's recommendation.

13 So the sentence of the Court is that the defendant is
14 sentenced to three years, 36 months in prison, concurrent on
15 each of the four counts. No supervised release will be
16 imposed, because it is obvious he will be deported at the
17 completion of his term.

18 Also, there is no point in imposing a fine, given his
19 financial circumstances.

20 There is a mandatory special assessment of \$400 that
21 must be paid.

22 There is a forfeiture of \$1,750,000. Did the
23 government bring a forfeiture order, or has that already been
24 entered, I can't remember.

25 MR. NAFTALIS: We already submitted it to your Honor.

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1 I believe it has already been signed.

2 THE COURT: Okay.

3 MR. NAFTALIS: It's on the docket.

4 THE COURT: All right. Is there anything else we need
5 to take up before I advise the defendant with respect to
6 appeal.

7 MR. GERZOG: No, your Honor.

8 MR. NAFTALIS: Only, your Honor, that I think you did
9 it at the beginning, that you adopt the PSR. And then you made
10 the factual --

11 THE COURT: Yeah, I'll sent to the probation office
12 and ask them to amend the PSR to make sure that it is criminal
13 history category VI, not the typographical error that appears
14 on page 18 where it is just listed as one.

15 So, was there a waiver of appeal in this case?

16 MR. NAFTALIS: No, your Honor.

17 THE COURT: Okay. So, Mr. Aksu, you have a right to
18 appeal the sentence. To be frank, I would then have to
19 reevaluate your mental capability. But you have a right to
20 appeal the sentence. Do you understand that?

21 THE DEFENDANT: Yes. Thank you.

22 THE COURT: And if you can't afford counsel for the
23 appeal, the Court will appoint one for you free of charge.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Very good. Thanks very much.

2 MR. NAFTALIS: Only one other matter, your Honor.

3 I believe there is an open indictment and the

4 government moves to dismiss it.

5 THE COURT: Yes. That motion is granted.

6 (Adjourned)

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